WHEREFORE, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted to review the judgment of the Court below.

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BRIEF IN SUPPORT OF THE PETITION

OPINIONS BELOW

The opinion of the Circuit Court of Appeals and the opinion of the District Court are cited in the petition.

JURISDICTION

The grounds on which jurisdiction of this Court is invoked are stated in the petition.

STATEMENT

The statement of the case has been set forth in the petition, and in the interest of brevity is not repeated here.

ARGUMENT

I

THE FAILURE TO GIVE FULL FAITH AND CREDIT TO THE ASSESSMENT DECREE

The assessment decree is entitled to the same faith and credit as is accorded it in the Texas Courts. *Magnolia*

Petroleum Co. vs. Hunt, 320 U. S. 430; 64 Sup. Ct. Rep. 208. In Texas the decree is res adjudicata as to everything therein adjudicated. The adjudication of jurisdiction, as well as liability, is entitled to absolute verity. *Southern Ornamental Iron Works vs. Morrow* (WE/Ref.), 101 S. W. (2) 336; *Gray vs. Moore* (WE/Dis.), 172 S. W. (2) 746.

The Receiver was awarded recovery against all the aforesaid subscribers as a class, whether named or not (R 46). This recovery was against those not named on the exhibit as well as those who were named thereon. *Sun Oil Co. vs. Burns* (Adopted—Tex. Sup. Ct.), 84 S. W. (2) 442.

The lower Court's construction overlooks that the number of subscribers in the class was approximated (R 38), and that the number of subscribers on the exhibit is not shown, and the total premiums on the exhibit are not shown.

The decree provided:

> "* * * The judgment hereby rendered is, therefore, against each and every Subscriber at Casualty Underwriters during such period of time from January 1, 1937, to August 11, 1938, inclusive, or any portion thereof in favor of the plaintiff for such assessment therein determined and adjudicated to be due, which sum is here fixed as the liability for assessment against each such defendant Subscriber, whether named herein or represented as a class." (R 47.)

The adjudication in the class decree that side agreements or understandings between any subscriber and the attorney-in-fact or the association constituted no defense to the assessment therein adjudicated (R 50) shows that the Court in the class decree had passed upon the identical question decided in the Courts below. The language of this Court in the case of *Supreme Tribe of Ben Hur vs. Cauble*, 255 U. S. 356; 41 Sup. Ct. 339, is appropriate:

> "* * * If the decree is to be effective and conflicting judgments are to be avoided, all of the class must be concluded by the decree."

II

DUE PROCESS AND ARTICLE 4913

The lower Court's holding that Braniff acquired legal rights under the side agreement sufficient to deprive it of due process in the assessment proceedings fails to give full faith and credit to the Texas decree. It also fails to give full faith and credit to the Texas Statutes. Article 4913 provides:

> "The Commission shall prescribe a uniform policy for workmen's compensation insurance and no company or association shall thereafter use any other form in writing workmen's compensation insurance in this State, * * * and any contract or agreement *not written* into the application and policy shall be *void and of no effect* and in violation of the provisions of this chapter, and shall be sufficient cause for revocation of license to write workmen's compensation insurance within this State."

This statute is expressly applicable, Article 4917:

> "The words 'Company' and 'Association' used in this Act mean * * * any reciprocal, or any inter-insurance exchange, authorized to write Workmen's Compensation Insurance in this State."

Texas Courts do not permit insurance contracts to be modified by parol side agreements. *English Freight Co. vs. Knox* (Civ. App.), 180 S. W. (2) 633; *Mulkey vs. Traders and General Ins. Co.* (Civ. App.), 93 S. W. (2) 582, writ refused; *Texas Employers Ins. Co. vs. Jones* (Civ. App.), 70 S. W. (2) 1014; an agreement contrary to statute is void, *Daniel vs. Tyrrell & Garth Investment Co.* (Texas Supreme Court), 93 S. W. (2) 372.

See also the ruling of the lower Court in *Bowen Motor Coaches vs. New York Casualty Co.*, 139 Fed. (2) 332.

Under Texas decisions, evidence of the parol side agreement is incompetent to vary Braniff's written obligations as a subscriber of the exchange. *Super Cold Southwest Co. vs. Elkins* (Texas Sup. Ct.), 166 S. W. (2) 97.

This rule was recognized by the lower Court in *Southwestern Packing Co., Inc., vs. Cincinnati Butchers Supply Co.*, 139 Fed. (2) 201.

The assessment decree is the sole evidence here to the assessment proceedings. There is no evidence that the class, or that Braniff as a member thereof, was improperly represented in those proceedings. The contention that Braniff's side agreement relieved it of its reciprocal un-

dertaking, or afforded a defense thereto, overlooks that this side agreement was an utter nullity and without effect.

In *Hansberry vs. Lee*, 311 U. S. 32; 85 L. Ed. 22; 61 S. Ct. 115, cited below, the right of election defeated the class proceeding. This Court there held the parties did not constitute a class capable of being represented by anyone.

CONCLUSION

It is respectfully submitted that a writ of certiorari should be issued.

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